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In The

Supreme Court of the United States

October Term 1995

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION; OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 3-372; DONALD R. WATSON,

Petitioners,

v.

MOUNTAINEER GAS COMPANY, a corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

Scott S. Segal*
Robin J. Davis
John F. Dascoli
SEGAL & DAVIS, L.C.
810 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 344-9100

**** Counsel of Record***
Counsel for the Petitioners

THE LEX GROUP ♦ 1205 East Main Street ♦ Suite 2 East ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3256

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I. QUESTIONS PRESENTED

Question No. 1: Whether this Court should grant certiorari to resolve the conflict among the circuits of whether shop rules promulgated pursuant to an employer's management rights clause become part of a collective bargaining agreement when not expressly incorporated into the agreement.

Question No. 2: Whether a circuit court of appeals should affirm the vacation of a labor arbitration award that modified a company's discipline of an employee, when the parties did not expressly limit the arbitrator's right to modify the penalty, when the arbitrator decided the parties' stipulated issue, and when doing so resulted in a decision that is contrary to this Court's established precedent and the holdings of other circuit courts of appeals.

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IV. PRIOR OPINIONS

The opinion sought to be reviewed is published at Mountaineer Gas Co. v. Oil, Chemical & Atomic Workers International Union, 76 F.3d 606 (4th Cir. 1996). (App. pp. 1-14). The District Court opinion, Mountaineer Gas Company v. Oil, Chemical & Atomic Workers International Union, No. 93-CV-862 (S.D. W.Va. February 27, 1995) is not published (App. pp. 95-119). The arbitrator's opinion and award, Mountaineer Gas and Oil, Chemical & Atomic Workers International Union, Local 3-372, FMCS No. 92-21366 (August 25, 1993) is not published. (App. pp. 15-94).

V. JURISDICTION

Petitioners, Oil, Chemical & Atomic Workers International Union; Oil, Chemical & Atomic Workers International Union, Local 3-372; and Donald R. Watson, seek this Court's review of the Judgment entered on February 26, 1996, by the United States Court of Appeals for the Fourth Circuit, by a Petition for Writ of Certiorari pursuant to the jurisdiction conferred by 28 U.S.C. § 1254(1). This Petition is timely filed because it was mailed within ninety (90) days of March

21, 1996, the date of the denial of Petitioners' Petition For Rehearing. Sup. Ct. R. 13.3 and 29.2.

VI. STATUTORY PROVISION INVOLVED

29 U.S.C. § 185(a) Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount of controversy or without regard to the citizenship of the parties.

VII. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Respondent, Mountaineer Gas Company, filed an action in District Court against Petitioners seeking to vacate an

arbitration award in favor of Petitioner Donald R. Watson. Mr. Watson had been terminated after testing positive for drugs. He initiated a grievance which proceeded to arbitration. The arbitrator reinstated Mr. Watson and converted the discharge into a disciplinary suspension. Mountaineer Gas Company sought to vacate the award on the grounds that it contravened public policy and failed to draw its essence from the collective bargaining agreement between Local 3-372 of the Oil, Chemical & Atomic Workers International Union (hereinafter OCAW Local 3-372) and Mountaineer Gas Company. The District Court had jurisdiction of the case under 28 U.S.C. § 1331 and 29 U.S.C. § 185.

The parties entered into an Agreed Order in which they agreed to prepare joint stipulations and to have the action decided on Plaintiff's Motion For Summary Judgment and the Defendants' Response thereto. The parties filed Joint Stipulations of fact along with joint exhibits. Thereafter, Mountaineer Gas Company filed a Motion for Summary Judgment and both parties briefed the relevant issues.

On February 27, 1995, the United States District Court for the Southern District of West Virginia granted Mountaineer Gas Company's Motion For Summary Judgment on the ground that the

arbitration award failed to draw its essence from the collective bargaining agreement. The District Court entered a Memorandum Order and Judgment Order which reflected the Court's rulings. Pursuant to Fed. R. App. P. 3(b), Defendants filed a Joint Notice of Appeal on March 21, 1995.

A panel of the Fourth Circuit affirmed the District Court's judgment. Mountaineer Gas Company v. Oil, Chemical & Atomic Workers International Union, 76 F.3d 606 (4th Cir. 1996). (App. pp. 1-14). Appellants sought a Petition For Rehearing And Suggestion For Rehearing In Banc. The Fourth Circuit denied the Petition. Mountaineer Gas Company v. Oil, Chemical & Atomic Workers International Union, No. 95-1724 (4th Cir. March 21, 1996). (App. pp. 120-21).

B. FACTUAL SUMMARY

Mountaineer Gas Company unilaterally imposed its drug testing policy (hereinafter referred to as Policy) on its employees on February 1, 1991. The Policy provided for the creation of an employee assistance program (hereinafter referred to as EAP). The Policy provided only rehabilitation of employees who voluntarily sought such rehabilitation prior to being tested. Under the Policy,

any employee testing positive for drugs is immediately terminated.

Donald R. Watson had worked for Mountaineer Gas Company and its predecessor, Columbia Gas Transmission Corporation, since March of 1976. (App. p. 50). He had an unblemished work history during his fifteen (15) years of employment with Mountaineer Gas Company. (App. p. 92). Donald R. Watson is a member of OCAW Local 3-372. (App. p. 17). Mountaineer Gas Company and OCAW Local 3-372 are parties to a Collective Bargaining Agreement. (App. p. 122). Article 2, Section 2 of the Collective Bargaining Agreement (hereinafter referred to as CBA) provides, in part,:

> It is agreed that there shall be no hindrance or interference with the Management of the Company in its several departments, including the determination of the Company policy, which does not interfere with the conditions of this Agreement as affecting wages, hours of work, and working conditions. All rights of Management, except insofar as the same are expressly modified in the terms of this Agreement, are hereby reserved to the Company, and the Company

> specifically has the power and the right to manage the business and direct the working forces, including but not limited to, the right to hire, suspend or discharge for proper cause...
>
> Nothing in this Section shall be construed to supersede or nullify any of the provisions contained in other Articles.

(App. pp. 122-23).

Mr. Watson was subjected to his first random drug test on February 7, 1991. The result was negative. On August 27, 1991, Mr. Watson was again given a second random drug test. That test was positive. (App. p. 19). After being placed on suspension pending an investigation of the positive drug test, Donald R. Watson was retested on September 10, 1991, and the result was negative. Mountaineer Gas Company then terminated Mr. Watson on September 19, 1991. (App. p. 23).

Donald R. Watson initiated a grievance under the CBA and the case was assigned to Arbitrator Robert A. Creo. (App. p. 17). At the arbitration hearing the parties stipulated to the following issue: "Was Grievant Donald Watson discharged for just cause? If not, what

shall be the remedy?" (App. pp. 18, 90). In granting the grievance in part and denying it in part, Arbitrator Creo ordered:

> Grievant must enter the Employees Assistance Program and take a drug test before returning to work. Grievant shall receive no back pay and his discharge shall be converted into a disciplinary suspension. The Employer may drug test Grievant at their sole discretion. The Grievant may be terminated for testing positive and/or refusing to be tested. Pursuant to the request of the parties, the Arbitrator retains jurisdiction over the implementation of this Award.

(App. pp. 93-94).

VIII. ARGUMENT

A. THERE IS A CONFLICT AMONG THE CIRCUITS CONCERNING THE IMPORTANT QUESTION OF WHETHER SHOP RULES[1] PROMULGATED PURSUANT TO AN EMPLOYER'S MANAGEMENT RIGHTS CLAUSE BECOME PART OF A COLLECTIVE BARGAINING AGREEMENT WHEN NOT EXPRESSLY INCORPORATED INTO THE AGREEMENT.

In Mountaineer Gas Company v. Oil, Chemical & Atomic Workers, 76 F.3d 606 (4th Cir. 1996), the United States Court of Appeals for the Fourth Circuit held that:

> [W]hen the collective bargaining agreement reserves to management the right to make and enforce disciplinary rules, any rules or policies

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1 The term "shop rule" means a work rule established by an employer. The term "shop rule" was used by the United States Court of Appeals for the Tenth Circuit in Campo Machining Co., Inc. v. Local Lodge No. 1926 of International Association of Machinists and Aerospace Workers, 536 F.2d 330, (10th Cir. 1976).

> promulgated in accordance with that authority are thus incorporated into the collective bargaining agreement and have the force of contract language.

Id. at 610 (citation omitted); (App. p. 13).

The Tenth Circuit, in Campo Machining Company, Inc. v. Local Lodge No. 1926 of International Association of Machinists and Aerospace Workers, 536 F.2d 330 (10th Cir. 1976), reached the opposite result. In Campo an employee was discharged for violating a shop rule which was promulgated pursuant to the management rights clause of a collective bargaining agreement. The case proceeded to arbitration and the arbitrator determined that although the shop rules were reasonable, they were **not incorporated** into the agreement. The arbitrator recognized that the employee's actions required discipline but held that discharge was not warranted under the particular circumstances. The employer challenged the arbitration award in district court. The trial court granted summary judgment for the employer, but the Tenth Circuit reversed and upheld the arbitrator's award. Id. at 332.

In Posadas de Puerto Rico Associates, Inc. v. Union de Trabajadores de la Industria Gastronomica de P.R.

Local 610, 670 F. Supp. 58 (D.P.R. 1987), the district court followed Campo and held that an arbitrator did not exceed his authority under a collective bargaining agreement by modifying an employee's dismissal to a reinstatement without back pay. The court noted that a shop rule promulgated pursuant to the employer's management rights clause clearly stated that a violation of the rule was cause for discharge. However, the court stated that the rule could not be considered part of the agreement and, in the absence of an unambiguous rule that is incorporated into the agreement, the arbitrator had the authority to interpret the agreement and modify the penalty. Id. at 63. Contra General Drivers, Warehouseman and Helpers Local Union 968 v. Sysco Food Services, Inc., 838 F.2d 794, 796, 799 nn. 1 & 4 (5th Cir. 1988) (holding that rules promulgated pursuant to authority granted in a collective bargaining agreement have the force of contract language).

In Sysco the collective bargaining agreement at issue stated:

> MANAGEMENT RIGHTS...
>
> *Section* 3. The Union recognizes the right of the Company to make and enforce Rules and Regulations and **that**

> **violation thereof may be just cause for discipline or discharge of employees.** The only question which may be the subject of a 'grievance' is whether or not the disciplined employee did or did not engage in the specific conduct which resulted in the disciplinary action.

Id. at 796 (emphasis added).

The Fourth Circuit Court of Appeals in Mountaineer Gas mistakenly relied on Sysco because in Sysco, the above language from the collective bargaining agreement expressly granted the employer the right to determine what constituted just cause for disciplinary action, and thereby incorporated the work rules into the collective bargaining agreement. Sysco, 838 F.2d at 796. Not only did the Mountaineer Gas Court mistakenly rely on Sysco but it failed to address Campo, whose facts are more similar to those in the instant case.

Applying the "incorporation" cases to this appeal, it is clear that the District Court and the Fourth Circuit Court should have upheld Arbitrator Creo's decision. Here, as in Campo, the Policy is not incorporated into the CBA. No reference is made to the Policy in the CBA and the Policy is not attached to the CBA. Indeed, if Mountaineer Gas Company

was allowed to unilaterally determine whether particular conduct constituted proper cause for a discharge, it would be akin to the fox watching the hen house. Workers covered under the CBA would thus become "at will" employees. Clearly, if the parties intended that Mountaineer Gas Company could specifically list each and every act which constitutes proper cause for discharge, the parties would have stated such in the CBA.

Petitioners assert that this Court should follow the Tenth Circuit's decision in Campo and its progeny, and hold that a shop rule promulgated pursuant to an employer's management rights clause is not part of a collective bargaining agreement unless expressly incorporated therein. Otherwise, employers would have judicial approval to add terms to a collective bargaining agreement when they could not obtain the same terms through the process of negotiation. A holding allowing management to unilaterally implement policies and assert that such policies are part of a collective bargaining agreement would strike a serious blow to the bargained-for position of labor unions as well as labor-management relations in this country.

B. THE HOLDING BELOW DISREGARDS THE FINALITY OF LABOR ARBITRATION, THIS COURT'S ESTABLISHED PRECEDENT, AND THE HOLDINGS OF OTHER CIRCUIT COURTS OF APPEALS.

Arbitration awards must be enforced "as long as the arbitrator is even **arguably construing or applying the contract.**" United Paperworkers International Union v. Misco, Inc., 484 U.S. 29, 38 (1987) (emphasis added). The standard of review of a labor arbitration award is among the narrowest known to law. Every presumption favors the validity of the award. When the parties have bargained for an arbitrator's interpretation of an agreement, "the courts have no business overruling him [the arbitrator] because their interpretation of the contract is different from his". United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).

In Misco, 484 U.S. 29 (1987), this Court further explained that an arbitrator's findings should not be overturned in the absence of fraud by the parties or dishonesty by the arbitrator. Id. at 38. However, the Misco Court did recognize that an arbitrator's award could be overturned if it "unarguably"

failed to draw its essence from the collective bargaining agreement. Id. at 36.

1. **By reading the Policy in conjunction with the management rights clause and "proper cause" provision of the CBA, the arbitrator was interpreting the contract.**

Petitioners assert that Arbitrator Creo's award draws its essence from the CBA. This assertion is directly supported by two courts of appeals. In Local 238 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers v. Cargill, Inc., 66 F.3d 988 (8th Cir. 1995), the United States Court of Appeals for the Eighth Circuit held that even though a collective bargaining agreement **expressly** incorporated[2] an employer's drug policy stating that employees who refused to submit to a drug test would be fired, the arbitrator could suspend the employee if there was not just cause to discharge the employee under the agreement. The court stated

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2 Respondent's Policy was not expressly incorporated into the Collective Bargaining Agreement it had with Petitioner. See infra at VII.A.

that by reading the drug policy in light of the "just cause" provision of the collective bargaining agreement, the arbitrator was arguably construing the contract. Id. at 990. The court explained that "[h]armonizing these discordant provisions was clearly a matter for the arbitrator and was well within his authority." Id.

Likewise, in Campo Machining Company, Inc. v. Local Lodge No. 1926 of International Association of Machinists and Aerospace Workers, 536 F.2d 330 (10th Cir. 1976), an employee was discharged for violating a shop rule which was promulgated pursuant to the management rights clause of a collective bargaining agreement. The rule stated that if an employee left the plant during his or her work shift without permission, he or she would be punished by discharge. Id. at 331. The collective bargaining agreement also provided that an employee could be discharged, demoted, or otherwise disciplined only if there was "good and sufficient cause." Id. at 331. The work rules were not expressly incorporated into the agreement.

The arbitrator recognized that the shop rule was reasonable, but held that the employee's discharge was not warranted under the particular circumstances. The employer challenged the arbitration award in district court.

The district court held that the arbitrator had no authority to find that a specific application of the rule would be unreasonable and it vacated the award. Id. at 332. After noting the narrow scope of review of arbitration awards, the Tenth Circuit reversed the district court and upheld the arbitrator's award. The court noted that the arbitrator:

> [C]onsidered all of the facts in his effort to determine whether the dismissal met the 'good and sufficient cause' standard set forth in the collective bargaining agreement. In doing so, he was engaged in the construction of the agreement.

Id. at 333.

The Fourth Circuit failed to address the Cargill and Campo cases in its decision in Mountaineer Gas Company v. Oil, Chemical & Atomic Workers International Union, 76 F.3d 606 (4th Cir. 1996).[3] In the Opinion and Award at issue here, the arbitrator stated the following:

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3 These cases and all other cases listed herein were cited in Briefs previously submitted to the Fourth Circuit.

> The parties **stipulated to the Issue** and that the Grievance was arbitrable since there were no timeliness or other procedural or jurisdictional questions.

(App. p. 18). (emphasis added). The Arbitrator also stated that the stipulated issue was as follows:

> Was Grievant Donald Watson discharged for just cause?
>
> If not, what shall be the remedy?

(App. p. 90). Further, the arbitrator identified Article II, Section 2 of the CBA as the **"PERTINENT PROVISIONS OF CONTRACT"**. (App. pp. 60-61). Such section contains the management rights clause and further states that employees will not be terminated unless there is "proper cause".

It is clear from the Opinion and Award that the arbitrator sought to determine if there was "proper cause" to terminate Donald Watson pursuant to Article II, Section 2 of the CBA. (App. p. 90). Further, the parties stipulated to the issue to be decided by the arbitrator. Although the arbitrator recognized that the Policy was reasonable, he rejected it as applied in

Mr. Watson's case and found that "just cause for immediate termination did not exist under these circumstances." (App. p. 92). In determining if there was "proper cause" to terminate Donald Watson under the CBA, the arbitrator considered Mr. Watson's unblemished work history, over fifteen (15) years of employment with the company, the negative drug tests in February and September of 1991, and the lack of any evidence of a poor or adverse job performance. (App. pp.92-93). By interpreting the proper cause provision in conjunction with the management rights clause of the CBA, the arbitrator clearly engaged in an interpretation of the CBA and his award should be upheld.

2. The CBA contains no provision prohibiting an arbitrator from modifying discipline imposed by Mountaineer Gas Company.

In upholding the District Court, the Fourth Circuit ignored the parties' stipulated issue and relied on the language contained in Article XXVIII of the CBA which states that any arbitrator "shall limit its decision to issue or issues thus submitted by the parties and shall have no authority to amend, add to, or subtract from this Agreement." (App. pp. 13, 129). The Fourth Circuit further

failed to address the United States Court of Appeals for the Sixth Circuit's decision holding that an arbitrator did not exceed his authority under the disciplinary provisions of a collective bargaining agreement by reinstating an employee who had been discharged for using alcohol while on duty, even though the agreement stated that such conduct constituted a sufficient basis for dismissal. Dixie Warehouse and Cartage v. General Drivers, 898 F.2d 507 (6th Cir. 1990).

In Dixie Warehouse, after reviewing contractual language that stated the arbitrator "shall not add to, subtract from, or otherwise change or modify" the agreement, the Sixth Circuit found that there was no contractual provision that expressly limited or removed the arbitrator's authority to review and modify the penalty. Id. at 508, 511. Accord Eberhard Foods, Inc. v. Handy, 868 F.2d 890 (6th Cir. 1989) (holding that because there was nothing in a collective bargaining agreement or work rules expressly limiting the arbitrator's authority to review the sanction imposed, the arbitrator could properly modify the sanction imposed on an employee for violating work rules agreed to by the union and the employer). In Mountaineer Gas, the Fourth Circuit also failed to address Eberhard Foods.

Another case that conflicts with the Mountaineer Gas decision is the United States Court of Appeals for the Eighth Circuit's decision in Cargill, 66 F.3d 988 (8th Cir. 1995). In Cargill, the Eighth Circuit held that even though a collective bargaining agreement expressly incorporated an employer's drug policy that specifically stated that employees who refused to submit to a drug test would be fired, the arbitrator could suspend the employee if he or she found there was not just cause to discharge the employee under the collective bargaining agreement. After reviewing contractual language stating that the arbitrator "shall not amend, alter or change the Agreement in any manner or form," the court held that there were "no remedial restrictions on the arbitrator's authority" and upheld the arbitrator's decision to reduce the discipline. Id. at 991.

The Fourth Circuit has also held that in the absence of an express contractual provision prohibiting an arbitrator from exercising discretion in fashioning an award, he or she can exercise such discretion. Lynchburg Foundry Company v. United Steelworkers of America, Local 2556, 404 F.2d 259 (4th Cir. 1968). Accord Posadas de Puerto Rico Assoc., Inc. v. Association de Empleados de Casino de Puerto Rico, 821

F.2d 60 (1st Cir. 1987); Reece v. Westmoreland Coal Co., 340 F. Supp. 695 (W.D. Va. 1972); Ohio Edison Co. v. Ohio Edison Joint Council, 771 F. Supp. 1476 (N.D. Ohio 1990); Allied Bldg. Prod. Corp. v. Local 247, Int'l Bhd. of Teamsters, 774 F. Supp. 1066 (E.D. Mich. 1991).

Instead of addressing any of the above cases regarding the restriction of arbitrators' remedies, including the Fourth Circuit's own Lynchburg case, the Mountaineer Gas Court relied on General Drivers, Warehouseman and Helpers Local Union 968 v. Sysco Food Services, Inc., 838 F.2d 794 (5th Cir. 1988) in reaching its holding. As mentioned above, Sysco is clearly distinguishable from the present case. In Sysco the collective bargaining agreement stated that the arbitrator could not "add to or subtract from or to depart from or modify, alter, amend or change any of the terms" of the agreement. The language also expressly granted the employer the right to determine what conduct constituted just cause for the purpose of disciplining its employees. Moreover, the language expressly limited the arbitrator's role to that of a fact finder who solely determines whether the prohibited conduct took place. No such language is contained in the CBA between OCAW Local 3-372 and Mountaineer Gas Company. Yet

the Fourth Circuit inexplicably relied on Sysco and ignored Lynchburg in affirming the vacation of the arbitration award. See also Campo, 536 F.2d at 333 (10th Cir. 1976) (quoting arbitrator's acknowledgment that nothing in the collective bargaining agreement limited his role to that of a fact finder).

Article XXVIII of the CBA between Local OCAW 3-372 and Mountaineer Gas Company **does not** restrict an arbitrator's right to modify discipline in the event that he finds that there was not proper cause for a particular level of discipline. (App. pp. 122-23, 127-29). The fact that Mountaineer Gas Company disagrees with the remedy crafted by Arbitrator Creo is no reason to vacate the award unless such remedy specifically violates the CBA. It clearly does not. Lynchburg, 404 F.2d at 261; United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. at 597-98. Accordingly, the arbitrator's award should be upheld.

3. The parties expressly granted the arbitrator the power to modify the discipline imposed by Mountaineer Gas Company in the event he found that there was not proper cause for a particular level of discipline.

How can an arbitrator be overturned for exceeding his authority when he specifically answered a question presented to him by both parties? Again, in Cargill, 66 F.3d 988, the Eighth Circuit held that an arbitrator could convert an employee's discharge into a suspension if there was not just cause to discharge the employee, even though an employer's drug policy that was expressly incorporated into the collective bargaining agreement unequivocally required that the employee be fired.

In reaching its decision the Eighth Circuit found it "highly significant" that the parties' stipulated issue was whether the employee "was discharged for sufficient cause and to determine the appropriate remedy if he was not." Id. The court further stated that when parties stipulate to an issue "it confers authority upon the arbitrator to decide that issue." Id. at 990-91 (citing First Options, Inc. v. Kaplan, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)). The court finally noted that there were "no

remedial restrictions on the arbitrator's authority," and that the parties **expressly invited** the arbitrator to evaluate whether a discharge was appropriate. Id.

As in the Eighth Circuit's decision in Cargill, both parties stipulated that the issue was whether Mr. Watson was terminated for just cause and if he was not, what would be the proper remedy. (App. pp. 18-90). It is undeniable that the arbitrator only did the job that the parties asked him to do and, therefore, was arguably construing and applying the CBA. This Court's decision in United Paperworkers International Union v. Misco, Inc., 484 U.S. 29 (1987), therefore requires that this Court uphold the arbitrator's decision.

The Fourth Circuit's failure to follow this Court's established precedent and the holdings of other courts of appeals regarding the finality of labor arbitration undermines the very important federal policy of settling labor disputes through arbitration. Misco, 484 U.S. at 36. If courts were allowed to question the honest judgment of arbitrators, "the speedy resolution of grievances by private mechanisms would be greatly undermined." Id. at 38.

IX. CONCLUSION

Shop rules promulgated pursuant to a management rights clause should not become part of a collective bargaining agreement unless the rules are expressly incorporated into the agreement. Otherwise, employers would have judicial approval to add terms to a collective bargaining agreement when they could not obtain the same terms through the process of negotiation.

Moreover, the holding below disregards the importance of the finality of labor arbitration awards. The decision is at odds with this Court's established precedent, and is contrary to the holdings of various courts of appeals. When an arbitrator modifies a company's discipline of an employee, the parties did not expressly limit the arbitrator's right to modify the discipline, and the parties stipulated that the arbitrator could decide the proper remedy, the arbitrator's decision should be upheld.

WHEREFORE, for the foregoing reasons, Petitioners pray that this Court grant certiorari and reverse the holding below.

Scott S. Segal *

Robin Jean Davis
John F. Dascoli
SEGAL AND DAVIS, L.C.
810 Kanawha Boulevard, East
Charleston, West Virginia 25301
(304) 344-9100

Attorneys for Petitioners

Counsel of Record *